IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.3.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.856 of 2006
and M.P.No.1 of 2006

1.Rajeswari
2.Sekar
3.Rajendran ..Appellants/Defendants 1 to 3

-vs-

1.K.M.Kumarasamy ..Respondent 1/Plaintiff
2.Ravichandran
3.M.Ramesh ..Respondents 2 and 3
/Defendants 4&5

First Appeal filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 2.9.2006 made in O.S.No.612/2004 on the file of the Additional District Judge (Fast Track Court No.1) Coimbatore.

For Appellants:- Mr.P.Rajendran

For Respondents:-
for R1 :- Mr.P.Valliappan
for R3:- No appearance

JUDGMENT

This appeal is filed against the Judgment and decree dated 2.9.2006 made in O.S.No.612/2004 on the file of the Additional District Judge (Fast Track Court No.1)Coimbatore in and by which the learned District Judge after analysing the evidence found that the plaintiff is entitled to suit claim and accordingly decreed the suit.

2. For convenience, the parties are referred as arrayed in the Original Suit. The brief facts of the case are as follows:-

3. Plaintiff states as follows:-

3.1. The first defendant is the widow and defendants 2 to 5 are the sons of one Moses Thiagarajan, since deceased. They have inherited the estate of Moses Thiagarajan. The suit property had belonged to one

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Elisabeth, wife of Draviam, who is the mother of Moses Thiagarajan and she is also dead. While alive, she had bequeathed it under a will dated 4.6.1984 to Moses Thiagarajan. Therefore, the defendants 1 to 5 are the legal representatives-in-interest of Moses Thyagarajan in respect of the suit property.

3.2. Moses Thiagarajan when he was alive had entered into a written agreement of sale on 13.10.2003 with the plaintiff promising to sell the property to the latter free of encumbrances for the sum of Rs.6,25,000/- (Rupees Six Lakhs and Twenty Five thousand only). On the said date, Moses Thiagarajan had received from the plaintiff the sum of Rs.6,00,000/- (Rupees Six Lakhs only) as advance sale consideration, which fact is also recited in the Agreement itself. A period of eleven months had been stipulated for the completion of the contract, as Moses Thiagarajan wanted to go to Madras for medical treatment and consequently requested time to make arrangement of delivery of possession of the property to the plaintiff.

3.3. The plaintiff had always been and even now is ready and willing to specifically perform his part of the contract. The plaintiff, after death of Moses Thiagarajan had appraised all the defendants about the agreement and offered to pay the balance of Rs.25,000/- (Rupees Twenty Five thousand only) and asked them to execute the sale deed as per the agreement, since they are bound under Law to do so. The second defendant often goes away to Delhi and the other defendants pretend that there was no co-operation amongst themselves and therefore, they were postponing to perform their part of the contract under some pretext or other. In view of the attitude of the defendants, the plaintiff caused a notice dated 13.7.2004 to be issued by his counsel demanding specific performance of the contract by receiving the balance of sale consideration and executing the sale deed and having it registered at his costs and expenses. Defendants 1 to 3 evaded receipt of the notice. Defendants 4 and 5 received the notice on 14.7.2004. They did not send any reply. The defendants have failed to receive the balance of consideration and execute the sale deed. Hence this suit.

4. Defendants 1-3 state as follows:-

4.1. The relationship between the plaintiff and Mr.Moses Thiagarajan is one of lender and borrower.

4.2. Late Mosses Thiagarajan borowed a sum of Rs.1,00,000/- (Rupees One Lakh only) of loan from the plaintiff in November, 2002. At that time, the title deed of the suit property was given to the plaintiff. The title deed is in the name of Elizabeth, the late Mother of late Mr.Mosses Thiagarajan. In order to safe guard his money, which was given as loan to late Mosses Thiagarajan, the plaintiff herein obtained signature of late Mosses Thiagarajan in a stamped paper. Later on the plaintiff in order to capture the valuable suit property has fabricated and forged an alleged agreement of sale.

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4.3. The recitals in the alleged agreement of sale are fictious and concocted. The Plaintiff who pays Rs.6,00,000/- (Rupees Six Lakhs only) as advance towards sale price is taking 11 months for balance of Rs.25,000/- (Rupees Twenty Five thousand only). This is unbelievable. Even then assuming, on the date of alleged completion of 11 months i.e. on 13.9.2003 the plaintiff has not expressed his willingness and readiness to pay the paltry balance sum of Rs.25,000/- (Rupees Twenty five thousand) to late Mosses Thiagarajan. The explanation given for the delay is false.

4.4. The signature of late Mosses.Thiagarajan on the blank stamp paper is misused by the plaintiff.

4.5. The typed agreement of sale which is now disputed by the defendants 1 to 3 is fabricated and forged one. Hence the suit is liable to be dismissed.

5. Plaintiff examined as P.W.1. One Thiru Arumugam examined as P.W.2. Ex.A.1 to A.17 were marked on the side of the plaintiff. One Mr.Thiyopilas Rajendra Kumar examined as D.W.1. No documents filed on the side of the defendants to confront the claim of the plaintiff.

6. The lower court after analysing the evidence in depth found that the plaintiff is not entitled to suit claim and accordingly dismissed the suit. This appeal is filed by defendants 1 to 3 against such finding.

7. Heard Mr.P.Rajendran, learned counsel for the appellants and Mr.P.Valliappan, learned counsel for the first respondent.

8. Upon hearing the rival claims, the only point for consideration is whether the suit transaction is one related to specific performance of the contract or with reference to the money dealings.

9. Point No.1:-

9.1. It is true that the suit property originally belongs to one Elisabeth wife of Draviam, who is the mother of Mosses Thiagarajan, husband of the first defendant and father of defendants 2 to 5.

9.2. The said Elisabeth wife of Draviam while alive had bequeathed the suit property by the will dated 4.6.84 in favour of Mosses.Thiagarajan. The inheritance of the suit property by virtue of the said will by Mosses.Thiagarajan is not under dispute. Therefore in pursuance of the will dated 4.6.84, Mosses.Thiagarajan, became the absolute owner of the suit property on the death of his mother, Elisabeth wife of Draviam who is the testator of the said will.

9.3. The counsel for the appellant contended that while Mosses.Thiagarajan was alive, obtained a loan of Rs.1,00,000/-(Rupees one lakh) from the plaintiff in November 2002 and handed over the title deed of the suit

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property to the plaintiff in addition of putting his signature in a blank stamp paper as securing for loan. He further contended that with a view to grab the suit property by fraudulent means, the plaintiff filled the blank stamp paper signed by late Mosses Thiagarajan with a recital as if the said late Mosses Thiagarajan executed the agreement of sale fixing the sale price of Rs.6,25,000/- after receiving a sum of Rs.6,00,000/- as advance and misused the same by filing the suit. He also relied on the decision reported in TEJRAM VS PATIRAMBHAU (1997 9 SCC 63) in support of his contention.

9.4. The learned counsel for the respondent would contend that late Mosses.Thiagarajan received a sum of Rs.6,00,000/- and executed an agreement of sale for a sum of Rs.6,25,000/- in respect of the suit property as per Ex.A.1 and that the suit transaction is genuine and therefore, there is no truth in the contention of the defendants.

10. Learned counsel for the plaintiff/first respondent relied on the decisions reported in the following judgments:-

1)VISHNU MOHAN VS IN-CHARGE DISTRICT JUDGE MATHURA AND OTHERS (AIR 2004 NOC 16 (ALL))

2)NANJAMMAL AND ANOTHER VS PALANIAMMAL (1993 -2 L.W.205)

3)DAGADU BAPU SHINDE VS VASANT SHANKAR NMIMBALKAR (AIR 1988 Bombay 22)

4)SUDHAKARRAO SHANKARRAO SARNAIK VS BHANUDAS N.DESHMUKH AND ANOTHER (AIR 2004 Bombay 350)

5)GURMAIL SINGH AND OTHERS VS RAJINDER SINGH (AIR 2003 Punjab-Haryana-336)

11. It is true that the agreement of sale entered into between the plaintiff and the defendant was on 13.10.2003. It is also true that the said agreement was prepared on the stamp paper dated 13.11.2002.

12. It is also true that the stamp paper was purchased in the month of November 2002. It is the case of the defendant that in the month of November 2002, there was a money dealing between him and the plaintiff, correlating to the date of purchase of stamp paper over which the present agreement of sale has been prepared which is under dispute. In this context, let me deal the facts referred in the decision cited by the counsel for the appellant/defendant.

13. In that case, plaintiff/agreement holder was a money lender. There is a discrepancy in the date of execution of agreement of sale. It is a specific case of the vendor that only in pursuance of the money dealing, the said document was executed by him. Since the agreement holder, admittedly, a money lender, it was held that the document relied on by the agreement holder should be related to the money dealing and not

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for the specific performance of the contract. The case on hand is not so. The agreement holder is not a money lender. It is also not the case of the defendant/vendor that the plaintiff/agreement holder is a money lender. In such view of the fact, I am of the view that the decision cited by the learned counsel for the appellant/defendant is not applicable to the facts on hand.

14. After analysing the decision cited by the learned counsel for the respondent/plaintiff, the following points are unearthed out of it.

1)In a case of defence of money dealing by the vendor, it is for the vendor to prove the transaction as one of money dealing by some modes.

2)Failure to prove the discharge of money dealing, an adverse inference has to be drawn against the vendor.

3)Not sending any reply to the notice of the agreement holder an adverse inference has to be drawn against the vendor.

4)Even if there is any discrepancy in the date of purchase of the stamp paper, i.e. prior to date of the sale transaction, it will not affect the agreement of sale transaction.

5) The defence theory is hit by Section 92 of the Indian Evidence Act, unless there are circumstances which would prove that equity will suffer by enforcing the agreement for sale.

15. Admittedly, even according to the appellant/defendant, loan amount is not discharged so far. The loan transaction is of the year 2002. So far, the appellant/defendant has not voluntarily come forward to discharge the loan amount to sustain his claim of loan transaction. In fact, this court passed an order of interim stay on 6.2.2007 in M.P.No.1 of 2006 in A.S.856 of 2006 directing the appellant/defendant to deposit a sum of Rs.6,00,000/- to the credit of O.S.No.612 of 2004 on the file of the District Judge, Coimbatore, within eight weeks from that day, failing which the interim stay granted shall stand automatically vacated. It appears that the appellant/defendant has not complied with the condition so far. However, the time for complying with the condition expires only on 2.4.2007.

16. In this case, the suit notice was issued to the defendant, which was also received by the defendant/appellant. They have not replied to the said notice. In this case, the original sale deed of the testator was handed over to the plaintiff by the vendor and the same is marked as Exhibit A.8. Patta has been issued in the name of Mosses. Thiagarajan, the vendor in the suit transaction. House tax has been paid by the plaintiff. Documents were filed to prove such fact.

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17. If the contention of the appellant/defendant is true that the suit transaction is only a money transaction, he would have paid the house tax for the suit property and produced the same to prove his contention in that way. No where it is stated that the defendant/appellant are paying the house tax for the suit property, if the transaction is one of loan transaction. There is no proof to show that the appellant/defendant paid the house tax for the suit property. Instead, the plaintiff paid the house tax and produced the receipt to prove that the suit transaction is not one of loan transaction.

18. Further the defendants failed to let in any evidence to prove that the defence theory is not hit by Section 92 of the Indian Evidence Act.

19. Collective events coupled with the decisions cited by the learned counsel for the plaintiff/defendant would prove that the suit transaction is not one of loan transaction but otherwise. The lower court has also dealt this point in that line and answered in favour of the plaintiff. I do not find any illegality or impropriety in the finding of the lower court. The finding of the lower court is in order and does not require any interference. Hence, this point is answered in favour of the plaintiff. Accordingly, the appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismisssed.

nvsri

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Additional District Judge,
(Fast Track Court No.1)Coimbatore.
2. The Section Officer. V.R. Section, High Court, Chennai,
+ One cc to Mr. P. Rajendran Advocate SR 19871
+ One cc to Mr. P. Valiappan Advocate SR 19734
JRG (co)
sg 9/4/07

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